

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

BENJAMIN MACHUL,

Plaintiff, : Case No. 3:16-cv-173

- vs -

District Judge Walter Herbert Rice  
Magistrate Judge Michael R. Merz

STATE OF MICHIGAN, et al.,

Defendant. :

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**ORDER DENYING MOTION FOR DEFAULT JUDGMENT AND  
FOR TEMPORARY RELIEF**

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This case is before the Court on Plaintiff's Motion for Default Judgment (ECF No. 5).

Under the Federal Rules of Civil Procedure, a party properly served with process issued from a federal court is required to respond under Fed. R. Civ. P. 12 within twenty-one days of service or be found in default. However, the Clerk has never issued process in this case. The day after it was filed, the Magistrate Judge recommended it be dismissed for lack of subject matter jurisdiction, meaning this Court has no authority to adjudicate the dispute between Plaintiff and the State of Michigan (Report and Recommendations, ECF No. 2). Given that recommendation, which remains pending before Judge Rice, the Clerk has not issued process in the case.

Plaintiff purports to show that he sent waivers of service of process to the Governor and Secretary of State of Michigan and they have not responded. However, the only sanction for

refusing to waive service of process is that such a party may eventually be required to pay the costs of service. The penalty for failing to waive service is not a default judgment.

Plaintiff has also filed a Motion for Temporary Relief (ECF No. 6) seeking payment of \$20,000 per month. Because this Court does not have subject matter jurisdiction over this dispute at all, it has no authority to order the State of Michigan to pay Plaintiff any amount of temporary relief.

The Motions for Default Judgment and Temporary Relief are DENIED.

July 18, 2016.

s/ *Michael R. Merz*  
United States Magistrate Judge